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Washington

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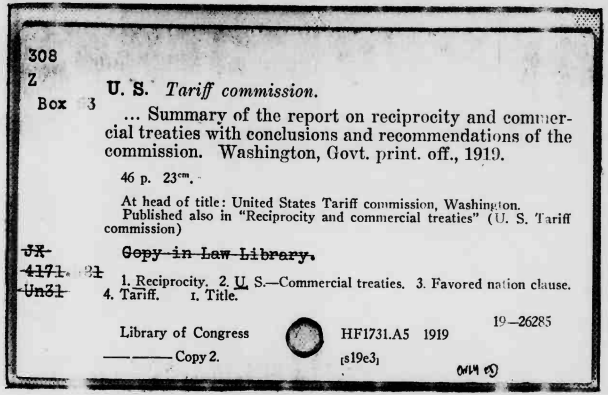

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UNITED STATES TARIFF COMMISSION
WASHINGTON

SUMMARY OF THE REPORT

ON

RECIPROCITY AND COMMERCIAL TREATIES

WITH

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION

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WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

UNITED STATES TARIFF COMMISSION
WASHINGTON

SUMMARY OF THE REPORT

ON

RECIPROCITY AND COMMERCIAL TREATIES

WITH

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

MAR 17 1919

UNITED STATES TARIFF COMMISSION.

Office: 1322 New York Avenue, Washington, D. C.

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FOREWORD.

This pamphlet is a summary of a report by the Tariff Commission on Reciprocity and Commercial Treaties and contains the conclusions and recommendations made to the Congress.

The main report, including this summary, is printed as a separate volume and is divided into three sections as follows:

(1) A study of the reciprocity and tariff agreements of the United States, covering the reciprocity treaty with Canada of 1854; with Hawaii of 1875; the agreements concluded under the tariff act of 1890; the agreements concluded and the treaties negotiated, but not ratified, under the tariff act of 1897; the bargaining features of the tariff acts of 1909 and 1913; the Brazilian preferential treatment of American products since 1904; the reciprocity treaty with Cuba of 1902; the attempt of 1910–11 to establish a reciprocity arrangement with Canada; and finally some minor episodes in the commercial relations of the United States with other countries.

Most of the foregoing studies include careful statistical examinations of the commercial effects of the agreements upon the trade of the United States.

(2) A study of the most-favored-nation clause with particular reference to the negotiation and application of reciprocity agreements, the differing theories and practices governing the use of the clause, and possible developments in the near future.

(3) An examination of the tariff systems and commercial policies of European States, including historical surveys of the recent policies and experiences, in relation to tariffs and tariff treaties, of Germany, France, and Russia, and a classification and description of the tariff systems of the important European countries.

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CONCLUSIONS AND RECOMMENDATIONS.

Absence of a continuous policy in the past.—The survey of the reciprocity experiences and commercial arrangements of the United States which is made in this report shows that the country has not in the past followed a consistent and continuous policy. It is true that there has been a steady current of opinion in favor of the principle of securing for ourselves and of extending to others equality of treatment. Early American statesmen believed that the offer of equality of opportunity of access to American markets, in return for the removal of the discriminatory barriers which then prevailed in other countries, together with denial of equal treatment to those countries which persisted in discrimination against the trade of the United States, would bring about a general régime of liberal and equal treatment. The method to be employed, however, was that of individual negotiation. Hence arose the special form and interpretation given by the United States to the clause in commercial agreements by which nations engage to extend to each other the most-favored-nation treatment, a clause to whose history and significance detailed consideration is given in Part II of the report. The practice of individual bargaining, which followed inevitably in view of the national circumstances and international situation of the United States through the larger part of its history, has led to special arrangements and has stood in the way of the adoption of a general policy.

To the early liberal attitude of the United States, the States of Europe did not on the whole respond. In the course of time, therefore, as separate and independent commercial arrangements were entered into, the treatment accorded by the United States to different countries became not infrequently unequal. Special agreements and provisions were made in separate cases as they arose. Having begun with the intention to offer equality of treatment, and with the hope of securing such equality in return, the United States has nevertheless been led into commercial relations with individual nations of which the effect was inequality.

During the period before 1890 two isolated agreements were made, those with Canada and with the Hawaiian Islands. Others were negotiated during this period, but were not consummated. Both those projected and those carried out were determined by the particular circumstances of time and conditions. The reciprocity agreements made, subsequently, under the acts of 1890 and 1897, were intended, it is true, to conform to the principles of a fixed general policy. But in operation even these acquired the character of special agreements. Both the policy and the agreements have since been given up.

An opportunist attitude was natural so long as the United States kept aloof from foreign complications and was intent upon avoiding them. Now, however, the situation is completely altered. The United States has become committed to far-reaching participation in world politics. The American Government can no longer shape its commercial negotiations solely with reference to the results of each particular arrangement. It must consider the world at large and must shape its commercial policy in conformity with the political and humanitarian principles which govern its general attitude in the international sphere.

So far as commercial policy and commercial negotiations are concerned, the evidence presented in the present report indicates that a policy of special arrangements, such as the United States has followed in recent decades, leads to troublesome complications. Whether as regards our reciprocity treaties or as regards our interpretation of the most-favored-nation clause, the separate and individual treatment of each case tends to create misunderstanding and friction with countries which, though supposed to be not concerned, yet are in reality much concerned. When each country with which we negotiate is treated by itself, and separate arrangements are made with the expectation that they shall be applicable individually, claims are none the less made by other States with whom such arrangements have not been made. Concessions are asked; they are sometimes refused; counter concessions are proposed; reprisal and retaliation are suggested; unpleasant controversies and sometimes international friction result.

A clear and simple policy needed for the future—Equality of treatment.—A great gain would be secured, now that the United States is committed to wide participation in world politics, if a clear and simple policy could be adopted and followed. The guiding principle might well be that of equality of treatment—a principle in accord with American ideals of the past and of the present. Equality of treatment should mean that the United States treat all countries on the same terms, and in turn require equal treatment from every other country. So far as concerns general industrial policy and general tariff legislation, each country—the United States as well as others—should be left free to enact such measures as it deems expedient for its own welfare. But the measures adopted, whatever they be, should be carried out with the same terms and the same treatment for all nations.

Possible exceptions to the principle of equal treatment.—In the application of any general principle of this kind, there may be occasion for qualifications or exceptions. Some allowance for exceptional treatment, not inconsistent, under certain circumstances, with the principle of equality of treatment, has been made by almost all countries in connection with discussions and negotiations with reference to the most-favored-nation clause. Special treatment, or the concession of special rates of duty, has been regarded as admissible, particularly in two sets of cases. First, it has been on occasions recognized that where one country has a long frontier line in common with another country, the unique ties of geographical connection give ground for exceptional arrangements. Considerations and exceptions of this kind are exemplified in the relations between Spain and Portugal, and those between Canada and the United States. Second, special political ties and political responsibilities have led to commercial relations also of a special character. Such were the relations that existed for a considerable time between the United States and Hawaii, and such are now the relations between the United States and Cuba. But these cases of exception, whether they are universally admitted to rest upon valid grounds or are debatable, do not make it impossible to carry out, with reference to the great mass of international relations and negotiations, the principle of equality of treatment.

It must be further admitted that, just as special political ties may lead to exceptional treatment, so also the severance of normal international relations may be followed by exceptional treatment. It remains to be seen what conditions of peace will be established and what commercial relations will ensue on the termination of the war. The nature of the settlement must affect the commercial arrangements also. Political and perhaps military considerations may compel modification of a policy which nevertheless should aim in general at reciprocal equality of commercial treatment.

So far as concerns existing commercial treaties and arrangements, the international relations of the United States, as they have been gradually shaped since the opening of the present century, are in conformity with the principle of equality of treatment, when interpreted and qualified with regard to special political affiliations and special geographical ties. The treaty between the United States and Cuba, providing for special remissions of duty on both sides, is to be judged in the light of the special political relations between the two countries. The act which stands upon our statute book, making possible a reciprocity arrangement with Canada, also rests upon grounds of its own, being influenced by the exceptional geographical relations. Only one commercial arrangement of the United States now in effect can be said to be inconsistent with the general principle, namely, that with Brazil. And this rests, not upon a treaty to which the United States is formally a party, but upon legislative and administrative measures of Brazil.

Methods of enforcing equality of treatment.—If, however, the principle of equality of treatment is to be adopted, something more than a bare declaration of policy is needed. In view of the divergent attitudes and demands of different countries, and of the undeniable possibility that other countries may not follow, in their own dealings with the United States, the principle of equality of treatment, some method of enforcement is indispensable.

As matters now stand, the United States has no way of bringing pressure to bear, or rather, none that is immediately available. If not accorded equality of treatment by other countries, this country is almost helpless. There has been provided no authorization for action on the part of the Executive. If the United States wishes to exercise pressure upon another country for the purpose of bringing that country's measures into conformity with demands of the United States for equality of treatment, the slow-moving process of legislative enactment alone is now available.

Measures for the purpose of securing just treatment by other countries may take one of two forms. The first of these is that of concessions, or of concessional arrangements, by which reductions of

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duty may be conceded to countries which grant the United States equality of treatment. The second is that of additional duties, in the nature of penalty or retaliatory duties, made applicable to countries which fail to give the United States satisfactory treatment. Each of these methods has its advantages and its disadvantages.

The method of concessions.—The main advantage of the concessional method—that of reductions of duty—is that it appears more conciliatory. To offer a concession is less irritating than to impose a penalty. But it must be borne in mind that if the granting of a concession be carried out with full effect and in full accord with the principle of equality of treatment, the concession must be extended alike to all countries which conform to the principle. Only a few countries are then left unaffected, and, as regards its effect upon these, a concessional method becomes the equivalent of a penalizing method.

A disadvantage of the concessional method, when the concessional schedule includes a considerable number of items, is that it causes the effective tariff schedules of the country in respect to those items for which concessional rates are provided to consist largely or mainly of the concessional or reduced rates of duty. It involves, if carried out fully and with the desired effect, a lowering of what is declared to be the general tariff. This brings it about that the general tariff becomes nominal; it contains rates higher than those which are expected actually to go into effect. This leads in turn to some uncertainty. at the time when the general rates are fixed, as to the extent to which they will be modified by the concessional arrangements. The outcome is likely to be virtually a maximum-and-minimum tariff, with possible uncertainty as to the extent to which the minimum rates shall be applied.

As regards economic effect, reductions of duty under the concessional method have different consequences under varying conditions of supply as regards the article affected. Where a reduction of duty affects only a fraction of the imports of a particular article, and the major portion of the imports of that article is still left subject to the main, or non-concessional duty, the result is not only a loss of revenue to the Treasury, because of the lower rates of duty, but absence of any gain to consumers. The reduction of duty redounds only to the advantage of the foreign producer. This situation was exemplified by our experience with Hawaii, under the reciprocity treaty of 1875. That experience was not indeed part of a general concessional policy; but it, nevertheless, supplies an example of the working of a limited concession. If, on the other hand, virtually the entire imported supply of a given article is admitted at the lowered concessional rates, the effect is that of a general reduction of duty. Such a result ensued, at least in the more recent years of the operation of the reciprocity treaty with Cuba, as a consequence of our concession of a reduced duty upon Cuban sugar. This concession resulted in a gain to the Cuban sugar producer during the first years after the reciprocity arrangement went into effect, but had come to redound, during the years immediately preceding the European war, mainly to the advantage of the domestic consumer.

The method of additional duties.—The other method—that of the imposition of additional duties on articles coming from countries which discriminate against the United States—has also its advantages and disadvantages. The main disadvantage is that, employing something in the nature of a threat, it seems combative in principle, unfriendly in appearance, and therefore irritating. In this respect it is in its outward aspect the reverse of the concessional method. But it should be borne in mind that when the additional duties are put into effect solely for the purpose of securing equality of treatment, and are therefore subject to termination as soon as such treatment has been attained, they can hardly give reasonable ground for complaint.

A distinct advantage of this method is that it does not affect the general tariff rates of the country which uses it. It is directed against those countries only which do not themselves apply the principle of equality of treatment. The probabilities are great—so great as almost to amount to a certainty—that it will not be applied to any considerable number of countries or articles. Administered with discretion, and with due regard to the character of the trade with different sources of supply, it leads to no substantial change in the general tariff system, and therefore leaves this to be determined solely with regard to the country's domestic needs and wishes.

As regards economic effect, additional duties, like the concessional, have different consequences according to their range of application. If a country to which such duties are applied sends to the United States only a fraction of the imports of a given article, the effect is simply that this fraction is excluded from the domestic market and is displaced by additional imports of the same commodity from elsewhere. Only in very rare cases would the domestic consumer be affected by the imposition of an additional duty on such fractional imports. If, indeed, a very large portion of the supply of a given article comes from the penalized country, the situation is different; still more is it different if the entire supply comes from that one country. In such cases additional duties are likely to entail a burden on the domestic consumer.

It follows that there is special need of care in the application of additional duties. They are most effective if there be competing countries, each desirous of sending to the United States the same or like goods, as is usually the case when applied to countries which send us manufactured products. For such, the conditions of production and the control of products are not determined by physical or climatic causes, and there is not likely to be found anything in the nature of exclusive control of a particular article by any single country. Additional duties then establish a preference of one foreign producer over another, but the pressure on the offending foreign country does not affect injuriously the domestic consumer.

Under the existing tariff system of the United States—that embodied in the tariff act of 1913—the method of additional duties would seem the only one that could be put at once into operation. For the time being it may be presumed that no concessions below the rates of the act of 1913 are likely to be proposed by the Executive or considered by Congress. Congress could provide for additional duties, the design being, not to bring about any substantial changes in the general tariff rates, and certainly not to entail increased prices

to consumers, but to secure fair reciprocal treatment from foreign countries.

Possible problems of the future.—Looking to the more distant future, the choice between the additional and the concessional methods must be influenced by the international relations which may develop as a result of the war. The latter method may then seem as effective a method as the former for securing equality of treatment from other countries. More particularly may this be the case if the concessions—in the form of lowered rates, within limits set by Congress—be arranged with the intent and with the effect of their being applicable to almost all countries, the higher non-concessional rates being designed for application, if at all, to a few recalcitrant countries only. Thus applied, the concessional method, as has already been said, is virtually a more conciliatory form of the additional method. It still has the disadvantage that it does not clearly and unequivocally leave the country free in the independent determination of its own tariff policy. It is less satisfactorily adapted to the single-tariff system, which the United States has generally used in the settlement of its own internal problems.

Conclusion as to methods.—To conclude, the method of additional duties is that which can be put into effect by the United States at once, without disturbance of its general tariff policy, and without committing the country definitively as regards the permanent commercial arrangements which may be evolved as part of the coming international settlement. The necessary flexibility can be secured by leaving the actual imposition of additional duties to the discretion of the President, who shall act always in conformity with a stated general principle and subject to general limitations defined by statute. Indeed, either system, the concessional or the additional, can be safely applied only when there is a provision for elasticity in its application and administration. It would seem indispensable that a considerable degree of freedom be left to the executive department. The restrictions within which that freedom shall be exercised must be prescribed according to the judgment of Congress. They may take the form of limiting the additions or penalties to stated ad valorem supplements to the existing duties, or to stated ad valorem duties (or equivalent specific duties) on articles appearing upon the general free list. The early enactment of legislation authorizing the imposition of additional duties at the discretion of the President is accordingly recommended by the Tariff Commission.

Concerning the position which the United States should take with regard to the most-favored-nation clause the Commission now makes no recommendation. There has been shown in the body of the report sharp diversity between the usage of the United States and that of most other countries in the interpretation of that clause; and there is also diversity of opinion as to its present and future value. An attentive, even exhaustive, consideration of its form and interpretation, and of its substantive effect, will be necessary in the course of the coming international readjustments. The extent to which the clause may be embodied henceforth in commercial and tariff agreements will depend largely on the general character of those adjustments. The other policies which the Commission recommends for immediate consideration may be adopted consistently with

the use of either of the two main forms of the most-favored-nation clause. It seems to the Commission premature for the United States to commit itself at this moment either to the maintenance without modification of the country's traditional most-favored-nation policy or to the advocacy or adoption of a different policy.

Finally, it can not be too much emphasized that any policy adopted by the United States should have for its object, on the one hand, the prevention of discrimination and the securing of equality of treatment for American commerce and for American citizens, and, on the other hand, the frank offer of the same equality of treatment to all countries that reciprocate in the same spirit and to the same effect. The United States should ask no special favors and should grant no special favors. It should exercise its powers and should impose its penalties, not for the purpose of securing discrimination in its favor, but to prevent discrimination to its disadvantage.

Respectfully submitted.

F. W. TAUSSIG, *Chairman.*
THOMAS WALKER PAGE, *Vice Chairman.*
DAVID J. LEWIS.
WILLIAM KENT.
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EDWARD P. COSTIGAN.

INTRODUCTION TO THE REPORT.

Subject and scope of this report.—The report is concerned primarily with the reciprocity experiences of the United States, and, in connection with and in relation thereto, the American theory and practice of most-favored-nation treatment. It gives also somewhat extensive attention to the tariff systems and commercial treaty practices of other, and especially of European, countries.

Commercial treaties.—Modern commercial treaties cover a wide variety of subjects. They relate to the treatment to be accorded to persons, to vehicles of communication and transportation, and to commerce in all its phases. Within them there appear provisions as to admission of diplomatic and consular officials, and their rights and activities; immigration and emigration; police protection and civil rights; conditions of travel, residence, and trade; exemptions from extraordinary levies, forced loans, and military service; navigation, quarantine, and harbor regulations and dues; conditions for importation, exportation, transit, transfer, warehousing; tariffs and customs laws; protection to patents, copyrights, and trade-marks. In a tariff study those provisions are of chief concern which have to do with trade and with customs laws and regulations.

Reciprocity agreements.—In the adoption of a commercial policy and in the making of arrangements connected therewith, every State has a twofold object—it seeks to gain and to preserve for itself advantages, and to escape, avoid, and guard against disadvantages. This being the case, the making of a commercial treaty becomes a form of concluding a bargain.

Where each of the parties to a treaty makes special concessions to the other with the intention that the transaction shall be looked upon as a particular bargain and with the understanding that its benefits are not to be extended automatically, generally, and freely to other States, the agreement is called a "reciprocity" agreement.

The most-favored-nation clause.—In the making of commercial treaties a State may or may not seek a special and privileged position, but it has been a matter of especial concern to each State to be assured that it shall receive treatment at the hands of other States at least as favorable as that which the latter accord to any others. Each State desires that such concessions and guarantees as have been made to other States shall be extended to it; also that all which may in the future be granted to other States shall equally be granted to it.

In order to safeguard against oversight at the moment of making a treaty, and to reduce the necessity for repetitions, an instrument was devised which should automatically assure or offer to newly contracting States the benefit of concessions made, previously or afterwards, to third States. That instrument was the "most-favored-nation clause." It is neither the purpose nor the effect of the most-favored-nation clause to establish a "most-favored nation;" on the contrary, its use implies the intention that the maximum of advan-

tages which either of the parties to a treaty has extended or shall extend to any third State—for the moment the "most-favored"—shall be given or be made accessible to the other party; thus in practice to prevent the establishing of distinctions or discrimination in the extending of concessions and guarantees.

Conditional and unconditional forms of the most-favored-nation clause.—Up to the time of the American Revolution the most-favored-nation provision appeared in but one form: the pledge was not qualified; no limitations were laid down as to the circumstances under which concessions granted to other States should be extended as between the contracting parties. But in the first American treaty, that made by the American Confederation with France on February 6, 1778, the clause was given a new phraseology. In this treaty there appeared the usual pledge that advantages which either of the contracting parties had granted or might grant to a third State should be granted to the other, but there was attached a qualifying conditional provision, "* * * freely, if the concession (to the third State) was freely made, or on allowing the same compensation, if the concession was conditional." From that time forward the most-favored-nation clause has been used sometimes with the qualifying stipulation and sometimes without it. Where no such stipulation is attached, it is customary to speak of the clause as being "unconditional;" when it is specified that there shall be compensation, the clause is described as "conditional."

European and American practice.—From the time when its representatives first subscribed to the conditional form of the clause, the United States, when pledging itself to favored-nation treatment, has employed that form almost without exception. The States of Europe, which had previously used the unconditional form only, have since employed sometimes the one and sometimes the other of the two forms—up to 1850 very frequently the conditional, after 1860 almost exclusively the unconditional. At the same time, in the negotiation of their earlier treaties the European States had been governed strictly by the principle of making concessions only in return for concessions sought: they had been in the habit of making treaty bargains with those States only from which they wished at a particular time to secure particular concessions. The American Government adopted the policy of offering favorable treatment to all who would reciprocate; it was frankly seeking to secure equality of opportunity in foreign markets, and it offered equality of opportunity to all countries seeking American markets on the basis of mutual concessions.

The willingness to treat with all nations equally and to offer the same concessions to all in return for compensatory concessions by each was essentially a step forward. It was no part, however, of the American policy to give to some States "freely" such concessions as were given to others in consideration of reciprocal concessions. The earliest American statesmen adopted the "special bargain" principle, and the American Government has acted ever since in conformity with the conception that commercial concessions are to be given for specific compensation, and that most-favored-nation treatment implies and requires nothing more than the granting of opportunity to purchase, on the basis of reciprocal give and take, treatment identical with, or similar to, that accorded other States.

Changes in European practice—Tariff schedules by negotiation.—European States have long since altered their commercial policies: they have experimented with various tariff systems; or they have adopted new theories and practices in regard to commercial treaties and treaty bargaining. The commercial liberalism which met with favor in the leading States of Europe after the middle of the nineteenth century emphasized the theory and practice of generalizing concessions—that is, of extending, without condition, to all nations entitled to most-favored-nation treatment, the benefit of concessions made to any. Thus the use of the unconditional form of the most-favored-nation clause, together with the application of the unconditional interpretation, became the common European practice. Notwithstanding later changes in their commercial policies and tariff systems, European States have found it still convenient to generalize the concessions which they make, and such being the case, their most-favored-nation practice has remained, and is, "unconditional."

Many of these States now devise the rates in their statutory tariff schedules with distinct and particular reference to bargaining possibilities; they expect to make reductions, on the basis of concession for concession, by negotiation with other States individually, and then to extend the benefit of all their reductions, generalizing them, to all the States with which they have most-favored-nation agreements.

Practice of the United States—Single-tariff system.—These practices the United States has not adopted. Throughout the tariff history of the United States there has been an unbroken line of tariff laws in which it has been the uniform practice, except for the slight deviation in 1909, to employ a single list of fixed duties intended for general application to imports from all countries alike. It has not been the policy of the United States to modify its schedule of duties by granting concessions to various nations with the intention that all the concessions shall be grouped into a supplementary tariff schedule and be extended to all.

As a result of the continuity of its tariff policy in this respect, the commercial treaty pledges to which the United States has subscribed exhibit less variation in intent and wording than appears in European treaties. There has been a continuity in the American conception and construction of these pledges, particularly of the most-favored-nation clause, which has not been paralleled in the course of the European conception and interpretation.

While the United States has not practiced the type of commercial treaty bargaining now prevalent in Europe, it has, however, had no little experience with tariff treaties in the pursuance of "reciprocity." The American conception of a commercial treaty as an agreement based on the principle of bargaining has made it possible for the United States to enter in good faith into "reciprocity" agreements with individual countries, giving and receiving special concessions. By means of reciprocity treaties, the United States has granted various concessions to certain countries, for compensation, and has accepted concessions from them. This has involved in each case particular reductions from the rates established in the general tariff. In most cases the determination to enter into such agreement has come as a result of unusual circumstances, such as a peculiar

geographical factor or peculiar political relations. Having made concessions under special circumstances, or for special compensation, the United States has not considered it obligatory or even just to extend the same favors to third states "freely."

Differences in principles and practices.—The principle which has consistently guided the practice of the United States in respect to treaty bargaining is thus different from that which has prevailed in Europe in recent decades. The American and the European conceptions of reciprocity and of the proper function of the most-favored-nation clause have differed. Proper appraisement of either requires an understanding of the commercial theories and policies and of the tariff systems and practices with which it is associated and of which it is made an instrument. To make possible such an appraisement, the Tariff Commission has made the studies which constitute the basis of this report.

SUMMARY OF THE REPORT.

I. RECIPROCITY AND TARIFF AGREEMENTS OF THE UNITED STATES.

The reciprocity experiences of the United States.—Reciprocity treaties, in the specialized sense indicated above, have been an increasingly important factor in the commercial policies of the United States. Before 1890 seven such treaties had been negotiated; but of these only two, those made with Canada in 1854 and with Hawaii in 1875, became effective. A commercial agreement of minor importance was concluded with Spain—for Cuba and Porto Rico—in 1883, which agreement remained in effect until 1892.

In accordance with section 3 of the tariff act of 1890, reciprocity agreements of a more generalized type were made with six American countries, and with Austria-Hungary, Germany, Great Britain (for the West Indies) and Spain (for Cuba and Porto Rico). These were terminated when the tariff act of 1894 went into effect.

Under the provision of section 4 of the tariff act of 1897, treaties, also of a more generalized type, were negotiated with Great Britain (for certain colonies), Denmark (for the Danish West Indies), Nicaragua, Ecuador, the Argentine, and France. These were, however, never ratified. Agreements more restricted in scope were concluded under section 3 of this act with France, Portugal, Germany, Italy, Switzerland, Spain, Bulgaria, Great Britain, and the Netherlands. These were terminated by the act of 1909.

Since 1904 special treatment for United States imports into Brazil has been established by a special arrangement. In 1903 a treaty, independent of general tariff legislation, was made with Cuba. This treaty is still in effect. In 1909–1911 President Taft arranged with representatives of the Canadian Government for a reciprocity agreement between Canada and the United States, but this failed of ratification by Canada.

1. THE CANADIAN RECIPROCITY TREATY OF 1854.

The arrangement which the Canadian people rejected in 1911 was but the latest of a long series of attempts which have been made to bring Canada and the United States, by the removal of commercial restrictions, into closer commercial relations. Only once has such an attempt been successful. A reciprocity treaty negotiated in 1854 was ratified, was put into force in 1855, and remained in force for eleven years. The great revolution in colonial and commercial policy which was carried through by the British Government in and after 1846 had thrown the British North American Provinces very much upon their own resources economically. Among policies possible at the moment, the most promising was that of close commercial relations with the United States, and to this the Canadian Government committed itself.

Tentative negotiations looking to reciprocity were begun in 1846. It was agreed in 1848 that reciprocity should be secured by concurrent legislation. The necessary legislation was passed by the Canadian Parliament and by the House of Representatives in the United States, but it never came to a vote in the Senate. The British Government next proposed that there should be a reciprocity treaty, but President Tyler objected to this on constitutional grounds. In 1852 the fisheries question assumed very serious aspects, and the British Government refused to discuss the diplomatic points therein involved if the discussion of reciprocity were excluded. Concerned over the political consequences much more than over the trade relations of the Canadian Provinces, the British Government finally pushed negotiations to a successful conclusion in Washington in 1854. A treaty was signed and ratified which provided that the United States and Canada should enjoy mutually the Atlantic coast fisheries and the canal systems of both countries and which provided also for the use by Americans of the St. Lawrence River and by British subjects of Lake Michigan. With respect to commerce, it virtually established free trade in natural products between the United States and the British North American Provinces. The legislation necessary to make the treaty effective was passed on both sides, and the treaty was put into effect by proclamation of President Pierce on March 16, 1855. It was to run for ten years, and thereafter subject to two years' notice for termination.

The operation of the treaty.—The treaty achieved the main purpose for which it was negotiated—relief of the tension over the fisheries controversy; but it did not have the effect of stimulating the American fishing industry. The opening of the St. Lawrence River and the Canadian canals to American shipping did not result in an increase in American traffic on those highways, but it did afford a choice of routes, which relieved congestion and insured reasonable railway rates to the Atlantic seaboard.

In any attempt to estimate the effect of the tariff changes on the trade between Canada and the United States, cognizance must be taken of a number of factors which complicated the situation and of facts which make calculations difficult. The investment in Canada of great sums of English capital, the Crimean War, the opening of new settlement areas in the West, increase in population, improvement of transportation facilities, speculation, a commercial crisis in both countries in 1857, financial difficulties leading to a fundamental change in Canadian fiscal policy, and, finally, the Civil War—all these influenced the course of developments both within each country and between the two, making it impossible to determine conclusively with regard to various increases and decreases whether they were or were not consequences of the treaty. The trade statistics of the period, also, both Canadian and American, are by no means satisfactory for the purpose of making accurate calculations.

There resulted from the treaty increased trade with Canada, which was more marked in regard to imports from Canada than in regard to exports to Canada. During the treaty period, the relative share of the United States in Canada's import trade increased; after the termination of the treaty, it declined. While the treaty actually benefited some American producers and injured none save fishing, lumber,

and possibly coal interests—and these in small degree—it was, on the whole, of greater benefit to the export trade of Canada than to that of the United States. It was anticipated when the treaty was concluded that such would be the case, but it was expected that the United States would be compensated for this by the opening of the Canadian coast fisheries and waterways and by the benefits to American railways and commission houses. These expectations were fulfilled in a considerable measure until the revision of fiscal policy in Canada and the conditions of the Civil War in the United States altered the situation. During the eleven years of the reciprocity period, the total trade between the two countries increased approximately threefold, and, for the United States, the trade with Canada became second in importance only to that with Great Britain. How much of this was due to the improvement in general relations between the two countries and how much to the reciprocity provisions of the treaty can not be determined. But it may safely be asserted that, in its several features the reciprocity arrangement contributed largely to the very considerable growth of trade and that both countries were benefited by it.

Abrogation of the treaty.—The main causes which brought about the abrogation of the treaty were the adoption of protectionist principles and practices in Canada, the resentment aroused in the United States by the attitude of Canada during the Civil War, and the need of increased revenue in both countries. To these may be added the dissatisfaction of the fish, lumber, and coal interests in the United States.

The denunciation of the treaty came from the side of the United States. In the winter of 1863–64, a bill calling for abrogation was passed in Congress, and on March 17 the President gave the required year's notice for termination.

Effects of the abrogation.—The termination of the treaty involved the termination of the arrangements which had relieved the political tension in Canadian-American relations. It offered the possibility of serious political consequences. The action of the United States and the hostile attitude of the American people, of which it was an evidence, were prominent among the factors which brought about, in 1867, the uniting of the Canadian Provinces into the Dominion of Canada.

The commercial effects of the abrogation were less than had been expected. In so far as trade was affected at all, it was the United States rather than Canada that suffered. The chief direct effects on the United States seem to have been to lay the burden of certain duties on the American consumer and to divert from American railways and merchants a part of the business of transporting, handling, and reexporting Canadian produce. The chief indirect result was to establish among the Canadian people a sense of grievance which affected trade to some extent and which undoubtedly contributed in no small measure later to Canada's rejection of reciprocity when the United States finally proposed it.

Efforts to restore reciprocity.—For thirty years after the termination of the treaty, Canadians continued to express a desire for reciprocity, and they made overtures several times to that end.

The treaty of Washington of 1871, disposing, among other things, of the fisheries and the waterways controversies, was a bitter disappointment to the people of Canada. They felt that the British Government had thrown away the most effective lever for opening the American market. When the Liberals entered office in 1874, they sent Mr. George Brown to the United States to negotiate for reciprocity. Mr. Brown offered reciprocity, not only in reference to natural products, but also on a long list of manufactures. A treaty was drafted, but with the provision that everything made free by Canada to the United States should also be made free to Great Britain, and the Senate rejected the draft. The Conservative party in Canada thereafter urged a policy of consistent retaliation against the United States, and they secured an overwhelming victory at the polls in 1878. In the ensuing tariff act of 1879 the Canadian free list was materially abbreviated. In 1887 Canadian commissioners offered to negotiate a treaty combining a settlement of the fisheries question with reciprocity, but this proposal was rejected by Secretary of State Bayard. The hostility which had characterized the relations of the two countries for twenty years was by this time rapidly decreasing and official attitudes became more conciliatory. In the spring of 1888 the House Committee on Foreign Affairs recommended that a commission be appointed to meet with Canadian commissioners and prepare a plan for commercial union, and at the next session a bill to that end was passed in the House, but was not acted upon in the Senate.

In 1890 a reciprocity treaty with Newfoundland was drafted at Washington, but this was withheld by the British foreign office at the instance of Canada.

Between 1890 and 1892 the Conservative Government in Canada made another effort to secure reciprocity, but the terms which it proposed were not acceptable to Mr. Blaine, nor were his proposals acceptable to the British and Canadian representatives. This was the last effort of the Conservatives on behalf of reciprocity. Thereafter Canadian public sentiment even among the Liberals swung strongly toward the "National," self-sufficiency policy, and from 1891 to 1910 the reciprocity question ceased to be a live issue.

2. THE HAWAIIAN RECIPROCITY TREATY OF 1875.

The reciprocity treaty concluded between Hawaii and the United States in 1875, which was in operation for twenty-five years, was a product of political rather than of economic considerations.

The location, resources, and political weakness of Hawaii made the islands, from the early part of the nineteenth century, attractive to several strong powers. Their strategic position made it inevitable that the United States should view with uneasiness and dissatisfaction their being brought under the control of any other power.

Several times before the middle of the nineteenth century, European States had made attempts upon the political integrity of Hawaii. In 1851 the King of Hawaii actually prepared to place his Kingdom under the protection of the United States in order to escape the aggression of a European power. In the years which followed, it became evident that protection by the United States was necessary, and the choice of methods lay between reciprocity and annexation. An annexation treaty was negotiated in 1854,

but was not concluded. In the next year a reciprocity treaty was negotiated, but this failed of ratification. In 1867, for the second time, a reciprocity treaty was negotiated, but the attention of Congress was very much taken up with other matters, problems of reconstruction were imperative, and the treaty did not secure ratification. In 1874 the question was brought up under peculiarly favorable circumstances, and in the next year a reciprocity treaty was negotiated and ratified. Congress thereafter passed the legislation necessary for putting it into effect, and it went into force on September 9, 1876.

In the treaty there were no political concessions other than the pledge that while the treaty remained in force Hawaii would not lease territory or grant special privileges to any other power, or make any treaty by which any other powers should obtain the same privileges which were assured by the treaty to the United States. The commercial provisions involved the admission by each country of a considerable number of products of the other, free of duty. Claims of right to the benefit of the commercial concessions were soon advanced by certain nations, on the basis of the most-favored-nation clause. The United States combatted these claims, on the score both of the conditional interpretation of the most-favored-nation clause and of the special and peculiar circumstances governing the relations between Hawaii and the United States, and the American contention was ultimately accepted.

The question of the renewal of the treaty came up in 1882. A convention to extend its term was negotiated in 1884. It was recognized that the operation of the treaty was more advantageous commercially to Hawaii than to the United States, but, even more than in 1875, political considerations weighed in the minds of American statesmen. There was incorporated in the convention which was to extend the treaty, a provision for the cession of Pearl River Harbor to the United States as a naval base. This became an item in the bargain. The convention was finally ratified, after its adoption had been strongly urged by President Cleveland, in 1887. It extended the duration of the original treaty, without any alteration in the commercial reciprocity provision, for a period of seven years from the moment of ratification, and thereafter subject to one year's notice.

Effects of the treaty.—The most important articles of Hawaiian export in the reciprocity group were brown sugar, molasses, fruits and nuts, and rice. These comprised at all times more than three-fourths of the aggregate exports of the islands. Sugar was first in importance, in a class by itself. The chief consideration which Hawaii received was the admission into the United States, duty free, of the specified products originating in the islands, while similar commodities, when coming from other sources were subjected to substantial rates of duty. The special preference, not the free admission, was the significant feature so far as the effect on Hawaiian exports was concerned.

Even before the establishment of reciprocity, the bulk of the Hawaiian exports had gone to the United States. Under reciprocity the percentage increased, and after annexation the United States absorbed practically the whole of the Hawaiian exports.

Reciprocity was more conspicuously effective in increasing the absolute amount of Hawaiian exports to the United States than in

increasing the share which these formed of the total Hawaiian exports. The exports multiplied to many times the maximum figure which they had reached previously. The one commodity signally affected was sugar, the Hawaiian production and export of which increased enormously, beyond all expectation and imagination. The remission of duty on this sugar was not followed by a reduction in price to the American consumer; the gain went to the sugar producers. Under this stimulus the cultivation of sugar in the islands became highly intensified.

The effects of the United States tariff act of 1890 emphasized among Hawaiian commercial interests the insecurity of a position dependent on reciprocity alone, and the question of annexation came again strongly to the fore. Dissatisfaction with the government of the islands, together with actual political disturbances, strengthened the desire, as well as the case, of those who favored putting the islands under the control of the United States. The political disturbances ended in a revolution in 1893, and the temporary government which came into control asked immediately for annexation, but this the United States refused. A permanent government of republican form was thereupon organized in Hawaii. With the passage in the United States of the tariff act of 1894, which once more put Hawaiian sugar in a favored position, economic conditions in the Islands improved. But the failure of reciprocity to assure constantly favorable conditions was remembered, and in 1897 the agitation for annexation was renewed. In the course of the next year, in view of the fact that the United States was at war, annexation appeared highly desirable, and the administration resorted to the procedure of a joint resolution of both Houses. Such a resolution was passed in the summer of 1898, and the President of Hawaii surrendered the sovereignty of the islands on August 12, 1898. The tariff arrangements of the treaty continued in effect until June 15, 1900, when the Organic Act providing for the political reorganization of the islands became operative.

The prosperity and greatly increased purchasing power which reciprocity had brought Hawaii under the influence of the tariff preference to Hawaiian producers had resulted in an increase of imports into Hawaii from the United States. This was not, however, comparable in volume to the increase of imports from Hawaii into the United States. The commercial development of Hawaii had led also to increased demand for the services of American shipping, banking, insurance, and the like. But when all the various factors have been taken into account, the conclusion is inevitable that the reciprocity relationship with Hawaii was economically unprofitable to the United States. However, in a comprehensive estimate, the fact must not be overlooked that in entering into the reciprocity arrangement Congress had not been actuated primarily by economic considerations.

3. NEGOTIATIONS, 1882–1890.

In the decade following 1880, repeated efforts were made to develop closer trade relations with Latin America, and several treaties were negotiated, but these did not secure the ratification of the United States Senate.

4. TREATIES AND AGREEMENTS UNDER THE TARIFF ACT OF 1890.

The legislative record.—The provision in the tariff act of 1890 for the imposition of penalty duties upon imports from countries which discriminated in their tariff treatment against goods from the United States may be considered the first authorization ever given by Congress for a comprehensive program of tariff bargaining.

Early in 1890, with the Republican party in power, the McKinley tariff bill was introduced. It provided for several changes in the tariff schedules, important among them being the free admission of sugar and molasses; but it contained no reciprocity provision, in spite of the strong recommendation of Mr. Blaine, Secretary of State, that such a provision be incorporated in the bill. The bill passed the House on May 21.

In the Senate an amendment was offered which would have practically established, through negotiation, free trade between the United States and the Latin-American countries. This never came to a vote. The Finance Committee finally recommended an amendment which would leave coffee, tea, hides, sugar, and molasses on the free list, but at the same time would provide that the President might suspend, by proclamation, their free admission from countries imposing unequal or unreasonable duties on products of the United States, and instead might impose thereon a stated list of penalty duties. The bill, so amended, was passed by the Senate, and, after going to conference without receiving any modification of its bargaining features, became law on October 1, 1890. Congress aimed by this act to secure more favorable trade relations with other countries by penalizing such countries as did not treat American products favorably, rather than by following the method which had been favored by the administration—that of remitting or lowering duties on the products of countries which in return would make similar tariff concessions. The act gave the President, within prescribed limits, a free hand in negotiations. The articles upon which penalty duties could be imposed, especially sugar, were particularly adapted to bargaining with South and Central American countries and also with the great beet-sugar producing States of Europe.

Under the terms of this act, Secretary Blaine began the negotiation of a series of agreements. Between January 31, 1891, and May 26, 1892, ten reciprocity arrangements were concluded, all but two of them being with countries of the Western Hemisphere. In each of these agreements the United States undertook to admit free of duty, when coming from the other country, the five articles—coffee, tea, hides, sugar, and molasses—enumerated in the penalizing provision of the act. In most cases the other contracting party agreed to admit free or at substantially reduced tariff rates the bulk of its imports from the United States.

The penalty duties were imposed only on Colombia, Venezuela, and Haiti, after these States had been asked to negotiate and had failed satisfactorily to respond. Several other countries, producers of the specified articles, conspicuously the Argentine and Mexico, failed to conclude agreements, but the penalty duties were not imposed on them; and this led to protests by Colombia and Venezuela against what they considered to be unfair discrimination.

Effect of the treaties on the trade of the United States.—An analysis of imports and exports during the period covered by these reciprocity treaties indicates that the penalty duties were moderately effective both as a measure of retaliation and as a means of securing tariff favors. There was a marked decrease in the imports from the penalized countries. The conditions of the sugar industry made it possible to secure liberal tariff concessions in return for a free market for sugar in the United States, while at the same time the imposition of the penalty duties did not prevent the consumer from profiting through the fall in the price of sugar in the American market.

Exports from the United States to the reciprocity States, favored by special reductions of duty, showed a substantial increase, in spite of the handicap of severe industrial depression and revolutionary disturbances existing in many of these States, while at the same time there were decreases in the aggregate exports to all other countries.

The termination of the reciprocity agreements.—In 1894, under a Democratic administration, a new tariff act was passed which did away with the reciprocity provision. It imposed a duty on raw sugar, raised that on refined sugar, and repealed the bounty on the domestic product. It further provided that treaties not inconsistent with this new provision might remain in force; but the reimposition of the duty on raw sugar acted almost automatically to annul the agreements made under the act of 1890, and was so interpreted by the State Department. Protests were made against the reimposition of the duty on sugar and against the abrupt termination of the agreements of the act of 1890 by several of the countries concerned. Considerable resentment was shown, and measures of retaliation followed in certain cases.

The termination of these agreements left only the treaty with Hawaii in operation.

5. TREATIES AND AGREEMENTS UNDER THE TARIFF ACT OF 1897.

In the congressional elections of 1896 the Republican Party once more came into power. Reciprocity, as a means of securing fairness of treatment for the expanding export trade of the United States in Europe, had been made a plank in the platform upon which the election was carried.

The passing of the tariff act of 1897.—At a special session of Congress, called on March 18, 1897, the Dingley tariff bill was introduced. This provided, in section 3, for tariff bargaining by two methods. The first part of the section contained a provision empowering the President to reduce duties on a specified list of articles (including argols, wines, and sugar) when coming from countries making equivalent concessions to the products of the United States. The second part consisted of a penalizing provision, also to be used at the discretion of the President, imposing an additional duty on coffee, tea, and hides when coming from countries deemed to be subjecting products of the United States to unequal or unreasonable treatment.

Less than two weeks after its introduction, and with very little attention to the reciprocity provisions, the bill was passed in the House. In the Senate the question of reciprocity was given careful consideration. An amendment was inserted, as a substitute for section 3 of the House bill, giving the President the right to negotiate commercial treaties, and, in return for concessions to the United States, to grant reciprocal reductions on the products of the treaty countries. The opposition to this amendment contended emphatically that the conferring of this power on the President and the Senate would take from the House its constitutional right to levy revenue taxes, but both the amendment and the bill were passed by the Senate.

The conference committee restored the original House measure as section 3, but from the list of articles upon which penalty duties could be imposed they removed sugar, hides, skins, and certain other items of less importance and substituted in their place tonka and vanilla beans, articles of little commercial importance. The committee retained the Senate amendment as section 4, but with a provision requiring that treaties negotiated under it must be submitted for approval to Congress, instead of merely for ratification to the Senate. Thus altered, the bill was accepted and passed by both Houses, and it became law on July 24, 1897.

Provision for negotiation of agreements.—President McKinley appointed John A. Kasson, of Iowa, as special commissioner, to be assisted by a "reciprocity commission," for the negotiation of agreements under the new tariff act.

The "argol agreements," negotiated under section 3 of the act of 1897.—In conformity with the provisions of the first part of section 3, two series of agreements, known from the first article specified on the list as "argol agreements," were concluded. The first series, agreements with France, Portugal, Germany, and Italy, was negotiated by Mr. Kasson during the McKinley administration. The concessions obtained by the United States, in return for a few and small reductions of duty, were of some importance. In general this series of agreements was received with satisfaction by the American public.

An indirect result of the conclusion of these agreements was that Switzerland, through the unconditional most-favored-nation clause of her treaty of 1850 with the United States, claimed and was given, without compensation, the benefit of the concessions extended by treaty to France. The most-favored-nation treaty provision upon which Switzerland based her claim was promptly denounced by the United States Government with due notice, and in March, 1900, ceased to be operative.

During President Roosevelt's administration, the United States negotiated a second series of "argol agreements." In this, new agreements similar to those of the first series were made with Spain and Bulgaria, and, of a more limited character, with Great Britain and the Netherlands; the treaties with France, Portugal, Germany, and Italy were supplemented or extended; sparkling wines were added to the list of articles upon which concessions were granted by the United States; and Switzerland and the United States once more resumed reciprocal commercial relations, although without the negotiation of a formal agreement.

Commercial treaties concluded (but not ratified) under section 4 of the tariff act of 1897.—Section 4 of the tariff act of 1897 authorized the President to negotiate treaties providing for the reduction by not more than 20 per cent of the duties on any articles imported into the United States in return for equivalent concessions by the other

party. Accordingly, Mr. Kasson negotiated a series of treaties, all of which made provision for tariff reductions of considerable importance.

Of these treaties the first to be agreed upon, and the one which aroused the most interest, was that with France, in 1899. After lengthy negotiations, the French conceded the rates of their minimum schedule on all but a few articles. In return the United States was to admit a long list of French products at reductions of from 5 to 20 per cent from the rates of the tariff of 1897.

Other treaties negotiated under this section of the act promised also to prove of considerable importance. They were all with or on behalf of American countries—the Argentine, Ecuador, Nicaragua, the Dominican Republic, Denmark (for St. Croix), and Great Britain (for various American colonies). The concessions made to the United States by these countries were numerous and varied; coal was one thing in particular for which favorable terms were secured. Important items upon which the United States agreed to make concessions were sugar, molasses, hides, and wool.

An attempt was made to conclude an agreement with Russia, but the imposition of a countervailing duty on Russian sugar in 1901 caused the breaking off of negotiations and was followed by retaliatory measures on Russia's part. Not until 1905, when Russia withdrew her retaliatory duties, were satisfactory commercial relations between the two countries reestablished.

The treaties submitted for ratification.—In December, 1899, the Kasson treaties were presented to the Senate for ratification, and early in 1900 the Committee on Foreign Relations took up their study. Popular interest was keen and much attention was given to the discussion, especially to that of the treaty with France. Two groups of interests finally stood in opposition—on the one side the representatives of American industries which were on an export basis, such as the iron and steel and the agricultural implement trades; on the other, both domestic producers who feared foreign competition and those persons who saw in the treaties an undesirable infringement of the principle of protection. Mr. Kasson strongly urged ratification of the treaties; President McKinley was in favor of them. No action was taken in 1900 and 1901, however, other than to extend the time during which ratifications might be secured.

Disheartened by his failure to secure ratification, Mr. Kasson resigned in March, 1901. The administration still supported the ratification of the treaties, and, in his last speech, at Buffalo, President McKinley expressed himself more strongly than ever in favor of the policy of reciprocity.

On November 19, 1901, the Manufacturers' Reciprocity Convention met in Washington and declared itself for protection and favorable to reciprocity only when the latter could be secured without injury to any of the domestic interests of manufacturing, commerce, or farming. Although President Roosevelt adhered to the views of his predecessor with regard to reciprocity, he likewise found it impossible to secure for the treaties the necessary approval of the Senate.

Finally, in 1903, action on the treaties was considered to have been abandoned; no mention of reciprocity was made in the President's message of 1903; and the treaties remained pigeonholed, without further action, in the Senate Committee on Foreign Relations.

Termination of the argol agreements by the act of 1909.—Six years later, the tariff act of 1909 provided for giving to all countries other than Cuba notice of termination of their reciprocity agreements with the United States.

Effect of the argol agreements upon trade.—The articles upon which the United States had made reductions of duty in the argol agreements were few, and, although some of these articles were imported in quantities and to values not inconsiderable, the reductions of duty were often small, and they were not exclusive, but were shared by most of the important countries. As regards imports, the influence of reciprocity was to be seen most clearly in increased imports of argols and sparkling wines from the reciprocity countries. As regards exports, the result appeared in a number of instances in increased shipments of articles upon which reductions of duty had been made. In most cases, however, the terms secured for the United States were merely a continuance of the most-favored-nation treatment, to which the United States had already been entitled under treaties in existence previous to the conclusion of the agreements. The only general conclusion derivable is negative. When reductions obtained by agreement are few and small, and are shared by all or most of the competing countries, the agreements will have very limited influence on the amount or the direction of trade.

6. TWO-SCHEDULE PROVISION OF THE TARIFF ACT OF 1909.

The movement for reciprocity gradually lost vigor. When, in 1909, the Republican Party began the revision of the tariff, provision was made in the bill introduced in the House for a two-schedule system, the minimum to be the general rates and the maximum the penalizing rates, the latter to be applied, at the discretion of the Treasury Department, to products from countries discriminating against the United States. All existing reciprocity treaties other than the one with Cuba were, after due notice, to be terminated.

The bill was amended in the Senate to provide that the free list and the rates in the general schedule of the House bill should constitute the minimum rates, while the maximum schedule should be made up by adding to the minimum 25 per cent of the values of the articles; the maximum schedule should be the general tariff, applicable to all countries, but the President should be authorized to extend the benefit of the minimum schedule to all countries found not discriminating against the United States.

The act, as passed August 5, 1909, followed the plan of the Senate amendment for making the maximum the general schedule. It marked a distinct departure from the policy of seeking special favors by granting reciprocal concessions. Though in form the policy was that of the concession of a minimum tariff, virtually it amounted to a provision to impose maximum rates by way of penalty against unequal treatment of American products.

France was the only country that protested, the protest being on the score that, on account of the wording of her 1908 agreement, the notice given her was shorter than that to the other reciprocity countries.

Before the maximum tariff was applied to any country, the Tariff Board, which had been created for the purpose under authority of the act (sec. 2), made an investigation of the existing tariff treatment of products of the United States by other countries. Discrimination was discovered in the case of a number of countries, and negotiations with such countries were entered into. In consequence of the negotiations, there were issued prior to April 1, 1910, proclamations applying the minimum rates to the countries comprising the entire commercial world; in no case was the maximum rate applied. In certain important instances, however, notably those of Germany and France, full equality of treatment was not extended to imports from the United States, and it would appear therefore that the act of 1909 did not provide a penalty method effective for the total elimination of all discrimination against American products in European markets.

7. RECIPROCITY SECTION OF THE TARIFF ACT OF 1913.

In 1913 the Democratic Party gained control of both the executive and the legislative branches of the Government. They at once prepared to revise the tariff. The Underwood bill as first drafted contained no provision for maximum and minimum schedules, but included a section authorizing the President to negotiate reciprocity agreements with foreign countries, such agreements, however, to be submitted to Congress for ratification or rejection. In the House a proposed amendment that there should be added a provision for maximum and minimum duties was rejected. In the Senate the bill was amended to include a provision for penalty duties to be imposed by the President at his discretion upon imports from countries whose treatment of American products was not "reciprocal and equivalent." In conference the Senate amendment was withdrawn and the bill was passed on October 3, 1913, with the reciprocity provision left as it had stood in the original bill.

8. BRAZILIAN PREFERENTIAL AGREEMENT.

Brazil had been among the countries with which, as has already been mentioned, the United States made reciprocity agreements under the provisions of the tariff act of 1890. The Brazilian agreement was terminated with the others by the tariff act of 1894.

The chief items in the Brazilian export trade to the United States were coffee and rubber, and these had both been duty-free in the United States without a reciprocity agreement. The articles of the export trade from the United States to Brazil were, however, in the absence of a special arrangement, subject to very heavy import duties on entering Brazil.

Such were the conditions governing the trade between the two countries from 1894 to 1897. The United States tariff act of 1897 authorized the President to impose a penalty duty of 3 cents a pound on coffee from countries according unequal or unreasonable treatment to American products. For various reasons it was not attempted to make an arrangement with Brazil by treaty. In 1904, moved by the possibility that this duty might be imposed on its coffee, and by representations of the United States minister, the Brazilian Government

was induced to plan considerable reductions in a number of its rates in favor of United States products, the most important of the articles thus provided for being wheat flour.

Much opposition to this measure, especially from the wheat and flour interests, developed in the Brazilian Congress and the reduction was effected only by an order of the President, under the authority of an old law which empowered him to reduce certain duties by as much as 20 per cent. The Brazilian Congress in the next year repealed the legislation which gave this authority, and from January 1, 1905, to July 1, 1906, the preference was not in effect. But on July 1, 1906, legislation restoring this authority to the President and adding a number of items to the original list became effective.

Upon the passage in the United States of the tariff act of 1909, the State Department negotiated with Brazil for tariff reductions in return for which Brazil might be entitled to the minimum rates. This, it may be noted, was an attempt to use the bargaining provisions of the act of 1909 as a means of securing special treatment for American products in a foreign market. As a result, numerous articles were added to the Brazilian list of 1906, and later the President of Brazil was given authority to extend this list at his discretion. In 1911 the preference on American flour was raised to 30 per cent. In 1916 the stipulation was made that the imports given this preferential treatment must be the product of the United States, and not merely imported via that country. In 1917 and 1918 the preferential list was renewed without change.

Effect of the Brazilian preferential treatment on American exports.—The important article on the Brazilian preferential list was wheat flour, and an analysis of the figures indicates that the United States exports to Brazil of this product did not increase, though the preference undoubtedly tended to check a decrease which other factors were bringing about. Other preferred articles were less important, forming only a small fraction of the total American exports to Brazil; but the preference had more effect on them, producing an appreciable increase, both absolutely and in relation to the total of Brazilian imports from all sources. Certain lines of trade, as, for instance, pianos and cement, were practically established by the preference.

In addition to a growth in the trade in the preferred articles, there was an increase in the general trade, due in part to the aroused interest in the new field. It would appear that although preference did not secure the desired results with respect to the chief item, wheat flour, it was moderately successful in stimulating an expansion of American trade in general with Brazil.

9. THE CUBAN RECIPROCITY TREATY OF 1902.

The close political relations of the United States with Cuba after the conclusion of the Spanish-American War turned the attention of the Cubans to the United States as a possible friend, who might rescue them from the depressed economic condition into which the years of revolution and war had thrown the island. The American administration in Cuba and President Roosevelt in Washington were in favor of giving Cuban products special tariff privileges in the American market, but the attitude of Congress was at first adverse. Many members looked upon any reductions of duty as a possi-

ble starting point for others less desirable. They, together with the domestic beet-sugar and cane-sugar producers, were opposed to any action which would involve a lowering of the tariff.

Public opinion, however, developed favorably toward closer economic relations between the two countries, and when the Fifty-seventh Congress convened for the second time, in January, 1902, the question became the subject of extended hearings, followed by the introduction of a bill in the House on March 19, 1902. The bill provided for reciprocal reductions of duties of 20 per cent, upon condition that Cuba should first adopt immigration laws as fully restrictive as were the laws of the United States. The arguments in support of reciprocal relations with Cuba emphasized particularly the alleged moral obligations of the United States toward Cuba and made no great claims for the economic desirability of the arrangement. After long debate, the bill passed the House by a large majority, but Congress adjourned before it came to a vote in the Senate.

President Roosevelt next sought to attain the same end by the negotiation of a treaty. His efforts resulted in the signing, on December 11, 1902, of a convention providing for a reduction of 20 per cent from the American duties on Cuban imports and reductions of from 20 to 40 per cent from the Cuban rates on American products. The Senate advised ratification, and the Cuban Government signified its approval of the treaty. The treaty required, however, the approval of Congress. Early in November, 1903, it was submitted to the Fifty-eighth Congress for approval. In the debates the arguments were similar to those in the earlier discussions. The measure was finally passed by both Houses, and on December 17, 1903, it was formally proclaimed.

This treaty was independent of the reciprocal provisions of the act of 1897, and was in no way connected with the treaties negotiated under that act. It contained in Article VIII some unusual provisions, namely, that the reductions in duty specified should not be extended to any other country, that during the continuance of the treaty no Cuban sugar should be admitted to the United States at a rate of duty less by more than 20 per cent than the rate imposed by the tariff act of 1897, and that no sugar from countries other than Cuba should be admitted by treaty or convention into the United States at a rate of duty lower than that provided by the act of 1897. The agreement has been in force continuously since 1903, with the exception that a portion of Article VIII was abrogated by a provision in the United States tariff act of 1913.

Second treaty with Cuba.—In addition to this commercial arrangement, another treaty had been negotiated, signed May 22, 1903, which prescribed the conditions under which American military authority would be withdrawn from and those under which it might be reinstated in the island. The guaranty of public order which this second treaty insured to labor and capital contributed much to the great commercial development which has subsequently occurred in the island, and any estimate of the effects of the first treaty must take into consideration the influence of the second.

Effect of the treaty on trade.—The supporters of the treaty had placed but little emphasis upon its possible commercial results. The major portion of the Cuban exports already found their market in the United States, and it did not appear likely that great benefits would accrue from an increase in the share of the Cuban imports which was or would be contributed by the United States. The years immediately preceding the treaty had formed a period of gradual and halting recovery of Cuban industry. The first years under the treaty showed a decided increase for both American exports to and imports from Cuba. Following the depression of 1907, the growth showed a relative decrease, but after 1908 there was again a tendency toward increase in value in both the imports and the exports.

The imports into the United States from Cuba have reflected the influence of reciprocity in a less significant degree than have the exports from the United States to Cuba. The principal gains made by the imports have been due to the fact that several important staple articles of Cuban production, especially sugar and tobacco, have found a steady and growing market in the United States, a market which would probably have expanded in some measure without the extension of tariff preferences.

A comparison of the United States exports to Cuba with similar exports to a group of Caribbean countries, which in a general way resemble Cuba as regards location, climatic conditions, and economic development, shows that the exports to Cuba increased immediately after the conclusion of the treaty, whereas those to the other countries did not. But since 1907 the rates of growth of the two trades have not been substantially different.

When the articles of export are examined in groups according to the amount of tariff preference received, it appears that the increases in the American exports to Cuba for the several groups have varied directly with the amount of the preference. From another classification of Cuban imports—grouping selected articles in which the United States encountered competition from other countries—it again appears that the increases in the American exports have varied directly with the amount of the preference. The fact must not be overlooked, however, that these increases in trade with Cuba have been due not only to the treaty of 1902, but also in considerable part to the favorable influence upon Cuba of the reconstruction program carried out under the assurance of law and order guaranteed by the treaty of 1903. The close political relations between the United States and Cuba, the investment of American capital, the development in the United States of a large-scale export trade in manufactures, and the settlement in Cuba of Americans—these and other factors have operated along with the tariff preference to increase the trade between the two countries.

10. COMMERCIAL RELATIONS OF THE UNITED STATES WITH NEWFOUNDLAND.

Newfoundland was included with the Canadian Provinces in the operation of the reciprocity treaty of 1854. The treaty of Washington, of 1871, contained provisions for reciprocal free admission of products of the fisheries of the United States on the one hand and the British North American colonies on the other, but these ceased to operate in 1885. A treaty relating to Canadian and Newfoundland fisheries products was negotiated in 1888, which failed of ratification by the Senate of the United States. A convention for reciprocity between the United States and Newfoundland was negotiated in

1890, but in view of the objections of the Canadian Government, the British Government was not prepared to ratify this. A similar treaty was negotiated in 1902, but this was later so amended by the Senate Committee on Foreign Affairs that it became unacceptable to Newfoundland. Finally, in 1910, the fisheries question was settled by arbitration proceedings between the United States and Great Britain.

11. THE ATTEMPT TO ESTABLISH A RECIPROCITY ARRANGEMENT WITH CANADA, 1910–1911.

Ever since the precipitate termination of the reciprocity treaty in 1865, there have been a number of obstacles operating to check the flow of trade between the United States and Canada, but not sufficing to discourage or to divert it. The United States tariff had always been something of a barrier. In Canada the Conservative Party framed a tariff (1879) intended especially to curtail the volume of importations from the United States, and when the Liberals came into power (1896) under Sir Wilfrid Laurier and adopted the "National Policy" of their opponents, they framed a tariff little less exclusive than that of the Conservatives.

The United States tariff act of 1897 contained a provision for increasing the import duties upon lumber by an amount equal to the export duties imposed by Canada upon logs. This threat was sufficient to cause Canada to remove her export duty, but several of the Canadian Provinces subsequently placed restrictions upon the exporting of timber, with the result that American capital went into the forests of those Provinces. The rates of the tariff of 1897 were almost prohibitive for certain Canadian products. The influence of that fact was shown in the failure of the imports of these articles to increase in proportion to the growing ability of Canada to compete in the American market. On their side the Canadians had adopted the preferential tariff system and were turning their attention to developing better markets in the mother country and the other British colonies. Nevertheless, in spite of commercial policies, a number of factors—geographic, social, and industrial—tended to offset or nullify artificial restrictions upon the trade between the two countries.

The years at the end of the nineteenth century and the beginning of the twentieth were the most prosperous that Canada had ever experienced. This prosperity and the visions which it aroused of future development account, along with the influence of the tariff legislation of the United States, for the almost universal approval in Canada of the protective and preferential tariff policy. Yet the growth of Canadian manufactures and the establishing of protective duties, aimed principally at the wares of the United States, had remarkably little effect in reducing the imports from the latter country.

In operation, the preferential system, however it may have encouraged British-Canadian commerce, did not prevent American-Canadian commerce from growing rapidly. The United States has advantages in competition for the Canadian market which the measures actually adopted could not overcome.

When the Canadian Government revised the tariff in 1907, the most important feature of the revision was the adoption of an intermediate schedule of duties framed and intended for bargaining purposes. When in the United States the Republican Congress revised the tariff in 1909, it was no part of its purpose to weaken the principle of protection. Such reductions of duty as were made were chiefly in reference to foodstuffs and raw materials. The distinctive feature of the tariff act of 1909 was the approach to the two-schedule tariff system in the adoption of a general schedule and a maximum schedule, making it possible, without special negotiation, to invite favorable treatment of United States products and to penalize unfavorable treatment.

When the tariff act of 1909 went into effect, Canada was threatened with the maximum duties. Their imposition would probably have provoked a tariff war. To avert this, President Taft made advances to the Canadian Government which resulted finally in formal negotiations at Washington. An arrangement was agreed upon whereby Canada should give to certain specified imports from the United States the benefit of her intermediate instead of her general rates, and should in return be given the general, or minimum, rates of the American tariff. Slight though the Canadian concessions were, the arrangement was attacked by the Conservative Party in the Canadian Parliament.

The concluding conferences between the representatives of the two Governments were held in Washington in January, 1911. It was decided that a reciprocity arrangement should be framed, after which its provisions should be brought into effect by means of concurrent legislation rather than by treaty. The Canadians refused to grant the use of the inshore fisheries in return for the free admission of fish to the United States, but they consented to annul the license charges which had been required under the *modus vivendi* of 1887. It was found impossible to arrive at an agreement concerning pulp and paper duties, but it was agreed that the United States should admit free of duty Canadian wood pulp and paper upon which no export duty had been charged in Canada. This provision was later a part of the legislation passed by Congress and it became effective in spite of the defeat of the reciprocity measure in Canada. The proposed changes in the general tariff rates affected a considerable number of articles listed in four schedules. The arrangement was such that Canada was to obtain practically all the advantages that she had sought formerly in reciprocity proposals, while she was to concede little more than what she was already extending to most countries, but not to the United States, through the operation of her concessional tariff schedule.

Legislation to carry the arrangement into effect was introduced concurrently in the Congress of the United States and the Parliament of Canada on January 26, 1911. This legislation was passed by Congress. In Canada it became the subject of extended parliamentary debate and widespread and vigorous public discussion. The Conservative Party made the issue the basis of a concerted effort to drive the Liberals from power. Reasons of great variety were urged why the arrangement should not be approved. The past unconciliatory attitude of the United States and the allegation of sinister politi-

cal designs—nothing less than a policy of annexation—were made use of as powerful arguments. The possibility of an injurious effect upon commerce within the Empire, with the consequent disadvantageous effect upon imperial relations, was strongly and effectively urged. Economic arguments of various types were presented. After several months' debate in the House of Commons, the Government appealed to the country. In the elections which followed, the Liberals were defeated and the Conservatives returned to power. The most potent among the causes which brought about the defeat of the Liberals appears to have been the argument that the adoption of the reciprocity policy would have as a consequence annexation. Other considerations, however, in no way connected with the reciprocity issue, contributed to the defeat.

The result of the Canadian election put an end to further consideration of the reciprocity measure. In 1913 a resolution was introduced in the House of Representatives in the United States, calling for the repeal of the reciprocity legislation of 1911, but this was rejected. The act providing for reciprocity with Canada still stands upon the statute books of the United States. The passage of a like act by the Canadian Parliament would put the arrangement, as negotiated in 1911, into effect.

II. THE MOST-FAVORED-NATION CLAUSE AND RECIPROCITY AGREEMENTS.

The most-favored-nation clause and the practice of reciprocity.—No single feature of modern commercial treaties has occasioned more or greater difficulty of interpretation than the presence therein of the most-favored-nation clause. Occurring almost universally, under widely differing conditions, in both the unconditional and the conditional forms, and in a veritable network of treaties, this clause has contributed at once to the solution of some and to the creation of other serious problems in commercial relations. Many such problems are bound to arise where and when some States do and some do not make reciprocity treaties.

As has already been mentioned, it has been the practice of the United States almost without exception to employ the conditional form of the most-favored-nation clause and to maintain the conditional construction. It is the practice of the European States to-day, though it has not always been, to employ the unconditional form and to maintain the unconditional construction.

The present European attitude is essentially a development of the past fifty years. The American position began with the making of the very first treaty of the United States, and from then until the present time the guiding principle in the commercial treaty-making policy of the United States has been that of bargaining between individual nations on the basis of reciprocal and progressive giving of favor for favor and concession for concession.

American statesmen have contended for equality of opportunity to bargain, but not for identity of treatment; for the removal and prevention of discriminations, but not for the same terms to all States at all times and in relation to all trade. A survey of the treaties to which the United States has been a party shows that this principle has been written expressly into nearly all of the most-favored-nation clauses. It further shows that since 1890 the United States has employed the favored-nation clause by no means as regularly as it did before that date; and that it has employed it in a less number of agreements, proportionately, than have some other States. In late years the United States has made various commercial agreements wherein most-favored-nation clauses have not been included; also, other types of commercial treaties and conventions wherein, because of previous difficulty over the interpretation of the most-favored-nation clause, it has apparently seemed advisable to both parties not to include the most-favored-nation provision specifically.

Theories and practices.—A survey of the United States practice in treaty construction shows that both the executive and the judicial departments of the American Government have consistently interpreted the favored-nation pledge as conditional and contingent upon the offering and acceptance of compensation. The leading commercial countries of Europe have moved first from the unconditional

toward the conditional, and later back to the unconditional interpretation. British practice exhibits with greater regularity, with greater consistency, and with greater simplicity than does that of any other State the possibilities of unconditional most-favored-nation treatment. The British attitude may be explained in part by reference to the fact of the free-trade policy and the peculiar commercial position of the United Kingdom, but it by no means follows that such circumstances are essential to the acceptance and maintenance of the unconditional favored-nation practice. The States of continental Europe, a few of them free trade, most of them protectionist, all practice unconditional favored-nation treatment. However, the views and practices of the European States have been subject to change and there are evidences that they may not hereafter continue what they have been in recent years.

Relation to the negotiation and application of reciprocity agreements.—In the controversy with Great Britain over the construction of the United States-Hawaiian treaty, both by the Hawaiian and by the United States Governments, the latter pointed out that "special privileges had been given in return for special, valuable considerations," and took the position that this was, because of geographical and political circumstances, a special and extraordinary case. Ultimately the logic of this position was accepted.

The application of the unconditional interpretation would have rendered of little effect the provisions of the United States tariff acts of 1890 and 1897, which authorized the negotiation of reciprocity agreements. To render the policy of special reciprocity effective, it is essential that the "American" interpretation of favored-nation obligations be applied. But the penalty-duties clause in the act of 1890 presented an issue which even the conditional interpretation would not properly meet. The principle of applying penalties on the basis of comparison of the relative heights of the tariff rates of the United States and those of the countries whose treatment of American goods laid them open to penalty is altogether different from that of bargaining with a view to securing and giving equality of treatment. It would leave it possible for some States, charging relatively low duties, to discriminate against the United States and yet escape the imposition of penalty duties; while other States not discriminating against the United States might nevertheless, because their general rates were higher than those of the United States, be subjected to the penalty duties. Penalty duties were actually thus applied to Colombia and Haiti, although those countries did not discriminate against the United States, while at the same time the benefit of the ordinary rates was extended to several countries which made no special concession to the United States.

In the course of a discussion which arose during the negotiation of reciprocity treaties under the tariff act of 1897, Mr. Sherman, Secretary of State, made a lengthy statement, thoroughly in conformity with views expressed by the long line of his predecessors, which succinctly sets forth the American conception of most-favored-nation obligations. Among other things, he said:

> [The most-favored-nation clause] does not control the right of the nation adopting it to make exclusive compensatory agreements in just reciprocity with other nations * * *; the allowance of the same privileges and the same sacrifices of revenue duties, to a nation which makes no compensation, that has been conceded to another nation for an adequate compensation * * * destroys that equality of market privileges which * * * the clause was intended to secure. * * * The right of other nations to enjoy the same special concessions depends on their ability to offer an equivalent compensation. * * * Such is the construction of the treaty clauses in question which the Government of the United States adopts in carrying out the late provisions of law for reciprocal conventions with other States.

The experience of the United States in meeting the claim of Switzerland in 1898 affords an excellent example of the impossibility of reconciling the practice of entering into reciprocity agreements with the giving of unconditional most-favored-nation pledges. It had to be admitted that, in the negotiation of the treaty of 1850 with Switzerland, the American plenipotentiary had pledged the United States to unconditional most-favored-nation treatment. The Government stood by the pledge. Switzerland was therefore given, without compensation, the benefit of concessions made to France in the special reciprocity treaty which had been concluded under the provisions of the act of 1897. Other States at once claimed the right to the same treatment, and it became necessary to denounce the favored-nation provision in the Swiss treaty.

Relations and discussions with Germany.—Not until the enactment of the bargaining provisions of the act of 1890 was the United States Government in a position to bargain effectively with Germany. Then, possessed of the necessary instruments, it did not undertake to enforce the claim of being entitled, without compensation, to the concessions which Germany made in her new treaties to European countries. Instead, in 1891, it entered into a bargain, which took form in the Saratoga convention, giving concessions for concessions.

In the course of the diplomatic controversies which arose and continued intermittently, and in which various claims were made by Germany on the basis of the treaty of 1828 between the United States and Prussia, the status of the treaty itself was finally brought into question. Although neither Government has ever officially declared the treaty not in force, it is possible to show that neither in theory nor in practice were its terms applied to German-American commercial relations after about 1890. The Saratoga convention of 1891 amounted to an admission on the part of each Government that it was not entitled automatically to concessions which the other had made to third nations. In 1900 the two countries negotiated a reciprocity convention whose terms were in conformity with the requirements of conditional most-favored-nation practice, but in 1903 Count Posadowsky declared, "The United States no longer enjoys most-favored-nation treatment in Germany." Nevertheless, when the reciprocity treaty was concluded between the United States and Cuba, the German Government contended that it should be given the opportunity to offer a concession through which to secure the benefit of the concessions made to Cuba. The circumstances being in several respects similar to those which had earlier attended Hawaiian-United States reciprocity relations, the United States did not in any way concede the German claim.

After the new German tariff law went into effect in 1906 a *modus vivendi* was arranged by which the United States secured the reduced rates made in the German treaties with European States, but this was

not interpreted by Germany to include reductions subsequently made to other States.

Difficulty of reconciling reciprocity and most-favored-nation pledges.—The evidences show that the conclusion of reciprocity treaties is likely to lead to claims from States outside the agreement which, if granted, will defeat the purposes of the treaties, and which, if not granted, occasion the preferring of a charge of disloyalty to treaty obligations. The practice of making reciprocity treaties requires the conditional construction of the most-favored-nation clause. But the use by the United States of the conditional interpretation of the most-favored-nation clause has for half a century occasioned, and, if it is persisted in, will continue to occasion frequent controversies between the United States and European countries.

Possible developments.—So many have been the inconveniences and difficulties of most-favored-nation practice, it has frequently been suggested that the pledge be done away with. Any proposal entirely to eliminate it would call for very careful scrutiny of the arguments by which such proposal may be accompanied. The clause has performed, undoubtedly, very useful functions. The fact that it has had its inconveniences is not sufficient reason for abandoning it. Such a proposal, to merit consideration, should offer a substitute affording promise of more satisfactory performance.

On the other hand, if the clause is to be retained, it should be possible for the nations either to agree by common stipulation upon the meanings to be attached to each of the various forms and types of the clause or to adopt one standard form whose phraseology shall be unequivocal and whose function shall be clearly defined.

The effect, whether the conditional or the unconditional practice is followed, depends most of all upon the honesty, consistency, and rigidity or liberality with which the application is made to conform to the principle.

Whatever the relative advantages and whatever the difference in net results, the practice of "preference," "reciprocity," and conditional most-favored-nation treatment necessitate frequent and repeated special negotiations, constant bargaining, inevitable delays, actual inequality of treatment. There are without question circumstances in which special treatment is warranted; this is recognized in relation to certain circumstances in the favored-nation practices of all nations. But in the absence of special circumstances or special relations, special treatment inevitably creates unwarranted distinctions and tends to perpetuate discriminations.

When the peace settlement is being decided, it should be found possible to frame a model pledge or pledges intended to secure equality of treatment; also to devise machinery for the construction and enforcement of such, along with other international pledges.

III. BARGAINING TARIFFS AND COMMERCIAL TREATIES OF EUROPEAN STATES.

Tariff systems.—Practically every nation frames its tariff policy with the primary aim of promoting domestic industries. Most nations add to this primary object that of encouraging their export trade. To carry out its policy, each country chooses that system which appears to it best adapted to its circumstances and purposes. Various tariff systems may be distinguished according to the methods by which the lists of duties are made and by the numbers of lists employed. Thus there are statutory tariffs and conventional tariffs, single-schedule systems and multiple-schedule systems. Among multiple-schedule systems are the preferential, the maximum-and-minimum, and the general-and-conventional, and there are combinations of these. Of European States, five have single-schedule systems; the others have all adopted one or another of the multiple-schedule systems, most of them the general-and-conventional.

History of recent tariff and tariff treaty policies.—The most conspicuous single event in the commercial history of the nineteenth century was the conclusion of the Cobden treaty of 1860 between England and France, which marked the full acceptance by Great Britain of the principle of free trade. The contracting parties agreed to unconditional most-favored-nation treatment. Almost at once England generalized the concessions which she had made. There followed among European States a rapid succession of treaties, involving tariff reductions and including the unconditional most-favored-nation clause. The tendency of the period was toward free trade.

After 1875 protectionist sentiment began again to prevail, Germany taking the lead in a movement for the restoration and raising of rates of duty. New tariffs and new treaties superseded those which had been made after 1860.

In 1891 France adopted the maximum-and-minimum tariff system, and at about the same time Germany adopted the general and conventional system.

Thenceforth and until the beginning of the present war there might be distinguished in Europe three groups of States, representing three types of commercial policy and practice—a free trade, single-schedule tariff group; a protectionist, maximum-and-minimum tariff group; and a protectionist, general-and-conventional group. In the realm of treaty-making, all have retained the principle of most-favored-nation treatment, but the practical effect of the favored-nation pledge has been limited very decidedly by increased specialization of tariff schedules. The importance of the bargaining or bartering process has been constantly and considerably increased.

The commercial policy and tariff system of Germany.—Among the Central European States, commercial policy has been in no small measure made a means to political ends. First, Prussian policy was directed with a view to the unification of Germany; then, German

policy was directed with a view to consolidating the interests of the Central European States. In 1871 Bismarck concluded with France the treaty of Frankfort, in which article XI provided for permanent, unconditional most-favored-nation treatment between Germany and France. This agreement has had, in operation, some advantages and some disadvantages for each of the contracting parties; it has operated, however, probably more than any other single treaty provision or other law, as a stabilizer of European commercial policy.

In 1879 Germany adopted a new tariff law whereby many protective duties were revived, duties on manufactured articles were increased, and the country was definitely committed to the policy of protection. In 1891 the Government presented to the Reichstag a new series of treaties, the Caprivi Treaties, which it had negotiated with neighboring countries, and these were soon confirmed almost without opposition. The characteristic feature of these treaties was that of tariff bargaining. The concessions made to each State were in the long run extended, by the operation of the most-favored-nation clause, to all the others of the treaty group and to some not in the group. The chief advantage which the treaties brought both to Germany and to the countries with which they were concluded lay in the fact that the duties in the conventional schedules could be counted on as fixed for a considerable and definite period. The effect upon German trade was far from decisive, but the treaties doubtless prevented certain undesirable developments which were imminent at the time when they were made.

Russia, following a tariff policy decidedly hostile to Germany, had raised the rates of her tariff, already high. Germany was provoked to retaliation, and there ensued a brief but bitter tariff war. In 1893 Russia adopted a maximum-and-minimum tariff, and subsequently each of the two countries raised its duties on the products which it imported from the other. So injurious were the effects on both that an agreement was effected and a new commercial treaty concluded between them in 1894, in which each made concessions to the other and most-favored-nation treatment was mutually pledged. There ensued a rapid revival of the trade which had suffered.

In 1892 Spain, the originator of the maximum-and-minimum system, though not the most conspicuous user, raised the rates of her schedules. This led to a tariff war between that country and Germany, which continued until, in 1906, each agreed to grant the other its lowest normal rates.

The adoption of the preferential system by Canada in 1897 led to strong representations by the German Government to the British Government, but to no actual disturbance of the commercial relations between Germany and the United Kingdom. Against Canada, Germany put into force the rates of her general tariff, and a tariff war ensued which lasted until a working arrangement was effected in 1910.

As between the United States and Germany, the trade was such that Germany was in no position to follow an aggressive tariff policy. An agreement was effected by the Saratoga convention of 1891, already mentioned, but it appears that during the years which followed nothing but the circumspection of the two Governments averted a tariff war. A convention was made in 1900 whereby Germany granted the United States the benefits of her conventional tariff and was given in return the rates which the United States had already extended on certain articles to France, Italy, and Portugal.

In 1897 the German Government appointed a commission which made extensive investigations by way of preparation for revision of the tariff and the making of new treaties. In 1901, in the face of bitter opposition from the agrarians, the Government introduced its proposals, involving the retention of the general-and-conventional system; a new tariff law was passed in 1902; new treaties were forthwith negotiated; and the new tariff and the new treaties went into effect in 1906.

The rates of the German tariff of 1906 evinced an inclination toward stricter application of the policy of protection. In the arrangement of schedules, though the general-and-conventional principle was retained, there was a partial adoption of features of the maximum-and-minimum system. The rates of the general schedule were specialized to an extent previously unknown. They were prepared with a view to negotiation, adjusted to the balancing of concession against concession with all the nicety of the most minute distinctions. The Government was authorized to employ penalty duties to enforce satisfactory treatment from States inclined to discriminate.

Treaties were concluded with eleven States, and from the concessions there was made up the conventional schedule, which was to be in force for twelve years from 1906. Though it may not be susceptible of conclusive proof, Germany appears on the whole to have bargained more successfully than the other parties to the treaties. She had had the advantage of superior organization and of patient and painstaking preparation for the negotiations.

In 1907 an agreement was made between the German and the American Governments whereby the United States was given the benefit of the German conventional rates. In 1909 the United States granted to Germany the minimum rates of the new tariff. After the passage of the United States tariff act of 1913, Germany attempted to negotiate a special agreement, but the response to her proposals was not favorable.

The commercial policy and tariff systems of France.—Although the Emperor, Napoleon III, had accepted the lead of England in making the Cobden treaty and others which followed, there remained in France strong opposition to the policy represented by these treaties. In 1875–76 the Government made an extensive investigation, from the returns of which it was evident that there was a preponderance of opinion favoring the multiple rather than the single-schedule tariff system.

In 1881 a new tariff law was passed, in which the rates on manufactured wares were increased, while raw materials and foodstuffs remained, as a rule, on the free list or were made subject to low rates. The general schedule was to be modified in operation by agreements with other powers. On the basis of this law, the Government negotiated treaties with seven European powers, in which rates were fixed, thereby establishing a new conventional schedule. With Great Britain, Germany, and Austria-Hungary there were framed simple conventions granting most-favored-nation treatment.

In 1887 Italy promulgated a new tariff with sharp increases of rates, terminated her treaty with France, and demanded new and

greater concessions. This led in 1888 to a tariff war, from which both countries suffered—Italy the more—and the two countries did not come to an agreement until 1898.

In 1892 France adopted a new tariff law which altered the whole basis of her commercial relations. She abandoned the general-and-conventional system in favor of an autonomous "maximum-and-minimum" system. The difference between the minimum and the maximum rates was approximately 25 per cent, and the law provided that the minimum rates should be applied to goods the produce of countries where French goods enjoyed equivalent concessions and were admitted at the lowest rates of duty. The Government was empowered to prolong the expiring commercial treaties, except in so far as they involved fixed rates of duty, and to apply the minimum rates to the wares of countries which would promise most-favored-nation treatment to France.

Several States were unwilling to make treaties on the basis of the concessions which France offered, and against such countries France put into effect the general tariff. Switzerland insisted upon modifications which the French Government refused to concede, and there resulted a tariff war which led to a considerable shrinkage in the trade between the two countries. Finally, in 1905, a convention was signed on the basis of a compromise on both sides. During the tariff war there had been a diversion of trade of both countries to other States, by which several of the latter, especially Germany and Belgium, profited.

A threatened tariff war with Spain was averted by an exchange of notes which did not involve changes of rates of duty. A short tariff war with Roumania was brought to an end by an agreement on the basis of most-favored-nation treatment.

Although France succeeded eventually in making agreements with all countries of commercial importance and in securing most-favored-nation pledges from most of these, she reached this end only after serious complications, which caused losses and left a permanent and somewhat adverse effect on her commercial relations. She did establish and maintain her autonomy in rate-making. The maximum tariff schedule stood essentially as a standardized warning. For the measure of autonomy which she gained, France paid by conceding a like measure to other countries, and she sacrificed guaranties of stability which the treaties of a former period had established.

When the time came for revision, the principles of autonomy and of the double schedule were accepted as established. The revision was confined to the rates. In the new law of 1910 the rates of both schedules were in general increased, though some were reduced. The disparity between the two was made almost systematically 50 per cent. The proposal of an intermediate tariff was rejected, but it was provided that the Government might under exceptional circumstances, and temporarily, apply the rates of the general tariff to products originating in countries where French products were not discriminated against, measures to carry out this provision to be submitted for ratification to the Parliament.

France had not, since 1892, extended her minimum rates in their entirety to the United States. A convention, signed in 1899, which would have given the United States most of the rates of the minimum

tariff was not ratified by the American Government. Special provision for American trade was made in the French law of February 24, 1900, but all arrangements between the two countries were rendered void by the passage of the American tariff act of 1909, which terminated all reciprocity agreements.

On the day on which it enacted the tariff law of 1910, the French Parliament passed a law regulating commercial relations with the United States. This authorized the admission of certain products from the United States at the minimum rates and of certain other products at the rates of the old general tariff. More than two-thirds of the American imports into France were already entitled to enter free of duty. It was estimated that 29.3 per cent of the total imports would be admitted at the minimum rates, 0.4 per cent would be admitted at the old general rates, and 3.2 per cent of the total imports would be subjected to the new general rates.

The commercial policy and tariff system of Russia.—In Russia, as in the neighboring countries, the last quarter of the nineteenth century was marked by a movement toward higher rates of duty. The Russian Government was influenced, in addition to the usual motives, by a desire to make use of the tariff to control the balance of trade and to protect the national currency from an outflow of specie. Russia employed at that time the autonomous, single-schedule tariff system. In her treaties, she had in some cases the unconditional and in some the conditional most-favored-nation clause, but in her relations with Austria and Germany she had no claim for favored-nation treatment. In 1893 the Russian Government adopted the machinery both of the maximum-and-minimum and of the general-and-conventional tariff systems. The application of the maximum schedule to imports from Germany led to a tariff war, which was brought to an end by a commercial treaty whose conclusion marked the definite acceptance by Russia of the general-and-conventional tariff system. This was the product of political as well as economic considerations. Other treaties, on the model of the German treaty, followed with several countries.

Between 1901 and 1905 Russia applied penalty duties to various imports from the United States. in retaliation for the levying of countervailing duties on Russian sugar and petroleum. These punitive rates were withdrawn in 1905.

In 1903 Russia adopted a new general tariff designed for bargaining purposes, in which the rates were raised on many items, particularly manufactured wares, and the schedule was more sharply specialized than before. Commercial treaties followed with Germany, France, and several other States, and the new tariff went into effect in 1906. The system thus established was not materially altered until after the beginning of the European war.

Classification and characteristics of tariff systems.—Germany, Russia, Austria-Hungary, Bulgaria, Greece, Italy, Portugal, Roumania, Sweden, and Switzerland have adopted the general-and-conventional system and have made with their neighbors treaties involving reciprocal tariff concessions. Spain originated the maximum-and-minimum system and is still classed as a maximum-and-minimum country, but her practice has become essentially that of the general-and-conventional system.

France and Norway employ the maximum-and-minimum system. The theory of this system is that there shall be two schedules of rates, made autonomously, below the lower of which the treaty-making authorities may not make concessions. In practice, however, it has been found necessary to make concessions.

The preferential system requires at least two schedules and is autonomous, but its minimum schedule is intended, not for the most-favored nation, but for specially "preferred" nations. There is in Europe no State which employs a tariff which may properly be designated as "preferential"; but preferential practices in some form and degree are in force between several European countries and their colonies.

The countries of Europe which still adhere to the single schedule system are either "free-trade" countries with peculiar advantages, or countries of minor commercial importance. There has been a marked tendency toward the abandonment of a single-schedule system, especially among countries whose tariff policy has a "protective" feature.

As matters stood until 1914, it was the universal practice of European States to extend unconditional favored-nation treatment to each other. But the tendency in framing tariff schedules was toward detailed specifications, with the intent frequently and with the result that numerous concessions, apparently generalized, were in application particular and exclusive. As a consequence, it is by no means the case that the generalizing of concessions under the European construction of the most-favored-nation clause effects or maintains complete equality of treatment in a given market. One thing, however, tariff treaties do accomplish positively and effectively: they fix, or "bind," rates of duty for a specified term of years, thus creating an assurance that during that term these rates will not be increased.

As with constitutions, so with commercial policies and tariff systems—the advantages or disadvantages of a particular type or feature must be estimated from the point of view of the situation and circumstances, the needs and the possibilities of each individual country at a particular time.

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